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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,773	09/18/2001	David A. Lightfoot	1268/2/2	8934
25297	7590	12/08/2006	EXAMINER	
JENKINS, WILSON, TAYLOR & HUNT, P. A.			KRUSE, DAVID H	
3100 TOWER BLVD			ART UNIT	
SUITE 1200			PAPER NUMBER	
DURHAM, NC 27707			1638	

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.

09/954,773

Applicant(s)

LIGHTFOOT ET AL.

Examiner

David H. Kruse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2006 and 10 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-45 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 41-45 is/are allowed.
- 6) ☒ Claim(s) 38-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

STATUS OF THE APPLICATION

1. This Office action is in response to the Remarks filed 5 September 2006 and the response filed 10 October 2006.
2. The objection to the specification is withdrawn in view of Applicant's amendment.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

4. Claims 38-40 remain rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This rejection is repeated for the reason of record as set forth in the last Office action mailed 2 March 2006. Applicant's arguments filed 5 September 2006 have been fully considered but they are not persuasive.

The limitations at claim 38, lines 5 and 6, "about 5×10^3 spore/cm³ soil or less" and at claim 39, line 6, "about 3×10^3 spore/cm³ soil or less", are not supported by the written description and are New Matter. Specifically the limitation "about" at claim 38 and the limitation "or less" at claims 38 and 39 are not supported by the specification. Applicant only describes three specific inoculum densities on page 81, 2nd paragraph of the specification. There does not appear to be sufficient support for the claimed ranges of inoculum as recited in the instant claims.

Applicants argue that support for the claim can be found throughout the specification as filed, including particularly at page 84, lines 1-5 ("inoculum densities of less than 3×10^3 spore per cm^3 of soil"). Applicants argue that additional support can be found can in claim 39 as originally filed ("an inoculum density of about 3×10^3 spore/ cm^3 soil"), thus, no new matter is believed to have been added by any of the amendments to the claims (page 7 of the Remarks filed 5 September 2006). These arguments are not found to be persuasive. The limitation "about" broadens the claimed inoculum level(s) or range, and is not supported in the specification. As Applicant states the specification describes inoculum densities of less than 3×10^3 spore per cm^3 of soil. While the Examiner views that 3×10^3 spore per cm^3 of soil as an upper limit of the claimed range is adequately supported, the limitation "about" broadens the upper limit of the range and is neither supported or defined by the specification. The rejection is maintained.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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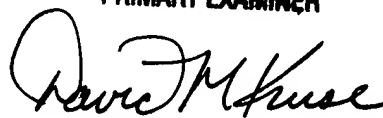
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Claims 41-45 are allowed.
7. Claims 38-40 remain rejected.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David H. Kruse, Ph.D. whose telephone number is (571) 272-0799. The examiner can normally be reached on Monday to Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached at (571) 272-0975. The central FAX number for official correspondence is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (571) 272-1600.

DAVID H. KRUSE, PH.D.
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read "David H. Kruse", written in a cursive style.

David H. Kruse, Ph.D.
29 November 2006

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9. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.